In the Supreme Court of the United States

OCTOBER TERM, 1958

No. 39

PAUL WILLIAMS AND LORENA WILLIAMS, HUSBAND AND WIFE, PETITIONERS

v.

HUGH LEE, DOING BUSINESS AS GANADO TRADING POST

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ARIZONA

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

In the order of this Court of April 14, 1958, granting certiorari, the Solicitor General was invited to file a brief setting forth the views of the United States in this case. 356 U. S. 930. The United States agrees with petitioners that the judgment should be reversed but not on the broad ground urged by petitioners that the courts of Arizona have no jurisdiction over tribal Indians with respect to any cause of action arising within the Navajo Reservation. We believe that it is unnecessary and inadvisable to decide that issue of general application, since the valid federal regulation directed to this particular reservation and particular transaction controls this case.

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On Writ Of Certiorari To The Supreme Court Of The State of Arizona

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE IN RESPONSE TO PETITIONERS' MEMORANDUM FILED AT THE ORAL ARGUMENT

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J. LEE RANKIN,
Solicitor General,
PERRY W. MORTON,
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MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE IN RESPONSE TO PETITIONERS' MEMORANDUM FILED AT THE ORAL ARGUMENT

This memorandum is filed in response to the invitation of the Court at the conclusion of the oral argument. The memorandum filed by petitioners at the argument lists cases presently pending in the Navajo tribal courts [1] by traders to collect bills owed to them by Indians upon the reservation. Petitioners' counsel, as we understand his argument, considers the fact that tribal courts have entertained such proceedings as dispositive of the so-called "narrow" ground urged in our brief amicus curiae. On the contrary we think this fact supports our position.

his argument, considers the fact that tribal courts have entertained such proceedings as dispositive of the so-called "narrow" ground urged in our brief amicus curiae. On the contrary we think this fact supports our position.

Our view was premised on both the regulation specifically dealing with the subject of credit by traders and the fact that the general subject of trading with the Indians had been occupied by federal statute and regulations. It was the state legal and judicial remedies which were thereby excluded to which reference was made in our brief

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1/ For present purposes we will follow petitioners' designation of these courts. We understand that the reference is to the Court of Indian Offenses established under 25 C.F.R. 11.

2/ Various aspects of the authority of the tribal courts are discussed in Federal Indian Law (Dept. of Interior 1958), pp. 444-451.

(p. 4). Remedies furnished under federal authority are within the purpose of the amendment of the regulation to educate the Indians to the idea of prompt payment of debts (Govt. Br. p. 3) and their existence does not do violence to the regulation. Petitioners' memorandum reemphasizes the fact that the federal statutes and regulations have fully occupied the field and show that the traders have their remedies thereunder.[2] Consequently, we repeat that "we believe it is unnecessary to consider what would be the situation absent specific federal statute, regulation or tribal provision" (Govt. Br. p. 5). The Department of the Interior agrees.

Respectfully submitted,

J. LEE RANKIN,
Solicitor General.

PERRY W. MORTON,
Assistant Attorney General.

ROGER P. MARQUIS,
Attorney.

NOVEMBER 1958.

I.

The Interior Department's regulation[1] is explicit that a trader with the Indians may extend credit to them, "but such credit will be at the trader's own risk." The Interior Department and we construe this provision as meaning that ordinary remedies for collection of debts—including judicial remedies—shall not be invoked within the reservation, and that traders must do business on that basis and understanding. The prior regulation, as it existed before 1937, proscribed assistance by Government officials in providing that "no assistance will be given by Government officials in the collection of debts against Indians" (see Pet. Br. 20).

It appears from the records of the Bureau of Indian Affairs that the changed language was initially recommended by the United Indian Traders' Association, which gave the following as its reasons for suggesting the alteration:

Explanatory note: In the first part of the

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[1] 25 C. F. R. 252.17 provides:

"*Credit at trader's risk.* A trader may extend credit to Indians, but such credit will be at the trader's own risk. All payments to Indians for products or labor must be made in lawful United States money or in credit on the trader's books at the option of the Indian. Receipt must be given Indians for all articles they have sold to traders and on which they have requested book credit. These receipts must show the following information: (a) the date the transaction was made, (b) the amount paid the Indian, and (c) a description of the article or articles sold. All receipts issued by the trader for Indian products must be recorded in the trader's books in such manner that all information contained in the receipt is duplicated. Receipts may be transferred upon order of the initial recipient if it is to his convenience that such a procedure be followed."

foregoing paragraph the Association has recommended the omission of the provision that Government officials would lend no assistance in the collection of debts. Is is not suggested that the agencies go in for collection work but it is thought that the agencies might well use such means as they have at their disposal to educate the Indians to the idea that prompt payment of debts is desired and encouraged by the Government and that when the individual deems it possible some assistance may be given in the collection of an honest debt. The bulk of the business of the licensed traders is barter pure and simple. The wholesale houses at the present time are cutting down on credit to the Trader yet the Trader is compelled to carry the Indian accounts for a considerable period of time. The Indian cannot pay cash in many instances and even, if he keeps his account on a cash basis by trading rungs [sic], wool or lambs, the trader cannot realize his cash from these Indian products without considerable delay, consequently, anything which will assist in speeding up the liquidation of the Indians' accounts will tend to lower the prices of the goods sold to the Indians. In this behalf it is pointed out that the prevailing rates of interest paid by the traders in this area are eight to ten percent per annum.

This quotation is from a "Memorandum of Action Taken by the United Indian Traders' Association at a meeting at the Harvey House, Gallup, November 12, 1933."

Because of this history, petitioners apparently abandon their reliance upon the regulation (Pet. Br.